

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Hanh Thi My Do v. Orange County SSA, WPD, et al.

Case No. 25-cv-1112-RSH-MSB · No. 25-cv-1112-RSH-MSB · Decided July 30, 2025

SUMMARY

The United States District Court for the Southern District of California granted Hanh Thi My Do’s renewed motion to proceed in forma pauperis. The court dismissed the amended complaint without prejudice under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim and for lack of venue, denied leave to amend, denied remaining motions, and directed the clerk to close the case.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Robert S. Huie
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 30, 2025
DOCKET	25-cv-1112-RSH-MSB
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff proceeding in forma pauperis filed an amended civil-rights complaint after the court previously dismissed the original complaint with leave to amend. The district court screened the amended complaint under 28 U.S.C. § 1915(e)(2)(B), granted the renewed IFP motion, and dismissed the amended complaint without prejudice and without leave to amend.
STANDARD OF REVIEW	The court conducted sua sponte screening under 28 U.S.C. § 1915(e)(2)(B). The failure-to-state-a-claim standard was the same as the Federal Rule of Civil Procedure 12(b)(6) standard, requiring sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished and nonprecedential district court order
PARTIES	Hanh Thi My Do v. Orange County SSA, WPD, et al.

TOPICS

- venue
- section 1983
- ada / disability
- pleadings
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

disability discrimination

federal courts

QUESTIONS PRESENTED

1. Whether Plaintiff qualified to proceed in forma pauperis based on the signed financial affidavit.
2. Whether the amended complaint stated a plausible civil claim under 28 U.S.C. § 1915(e)(2)(B), including claims under 42 U.S.C. § 1983 and Title II of the Americans with Disabilities Act.
3. Whether venue was proper in the Southern District of California under 28 U.S.C. § 1391(b).
4. Whether Plaintiff should receive further leave to amend.

HOLDINGS

1. Plaintiff qualified for in forma pauperis status because the renewed motion contained a signed financial affidavit satisfying the court that Plaintiff could not pay the filing fees.
2. The amended complaint failed to state a claim and was subject to dismissal under 28 U.S.C. § 1915(e)(2)(B).
3. The amended complaint did not state a plausible Title II ADA discrimination claim against Grand Canyon University.
4. Plaintiff failed to establish venue in the Southern District of California.
5. Further leave to amend was denied because Plaintiff had already received an opportunity to cure the identified defects and further amendment would be futile.

KEY QUOTATIONS

“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure [(“Rule”)] 12(b)(6) standard for failure to state a claim.” (at 2)

“Although the Amended Complaint properly alleges Plaintiff’s disability, it fails to allege non-conclusory facts stating a plausible claim for discrimination on the basis of that disability.” (at 4)

“As far as the Court can discern, the only allegations the Amended Complaint makes in relation to venue is that he is a resident of San Diego, California. This is not sufficient to confer venue.” (at 5)

FACTUAL BACKGROUND

The amended complaint asserted claims under 42 U.S.C. § 1983, the Americans with Disabilities Act, and several state and federal theories based on alleged events involving Orange County courts, prosecutors, jails, police departments, and a university. Plaintiff alleged that proceedings or detention in Orange County involved a wrongful criminal case and harsh pretrial conditions, and that Grand Canyon University changed course grades and discriminated against him based on disability. The court found that the pleading did not provide sufficient nonconclusory facts connecting the named defendants to viable civil claims and did not establish that venue lay in the Southern District of California.

PROCEDURAL HISTORY

Plaintiff filed the action and an initial IFP motion on May 1, 2025. The court denied the initial IFP motion without prejudice because the financial affidavit was unsigned, screened and dismissed the original complaint, and granted leave to amend. Plaintiff then filed a signed renewed IFP motion and an amended complaint. The court granted IFP status but dismissed the amended complaint for failure to state a claim and failure to establish venue in the Southern District of California, denied further leave to amend, denied remaining motions, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Venerable v. Meyers, 500 F.2d 1215, 1216 (9th Cir. 1974)
- Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Del Elmer, Zachay v. Metzger, 967 F. Supp. 398, 403 (S.D. Cal. 1997)
- Duvall v. County of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 HANH THI MY DO, Case No.: 25-cv-1112-RSH-MSB 12 Plaintiff, ORDER
GRANTING MOTION TO 13 v. PROCEED IN FORMA PAUPERIS 14 ORANGE COUNTY
SSA, WPD, et al., AND DISMISSING COMPLAINT 15 Defendants. [ECF No. 7] 16 17 18 On
May 1, 2025, plaintiff Hanh Thi My Do, proceeding pro se, filed a civil action 19 pursuant to 42
U.S.C. § 1983 against the Orange County Superior Court and numerous 20 other defendants.

At the time of filing, Plaintiff also filed a motion to proceed in forma 21 pauperis (“IFP”) pursuant
to 28 U.S.C. §1915(a). ECF No. 2. 22 On June 4, 2025, the Court entered an order (1) denying IFP
status without prejudice, 23 on the grounds that Plaintiff failed to sign his financial affidavit; and
(2) screening and 24 dismissing the case pursuant to 28 U.S.C. §1915(e)(2)(B), while also granting
leave to file 25 an amended complaint.

26 On July 3, 2025, Plaintiff filed a renewed motion to proceed IFP accompanied by a 27 signed
financial affidavit, and also filed an Amended Complaint. ECF Nos. 6, 7. 28 1 As set forth below,
the Court grants Plaintiff’s renewed IFP motion, but dismisses 2 the Amended Complaint. 3 I.

MOTION TO PROCEED IFP 4 Generally, all parties instituting a civil action in this court must pay a filing fee.

See 5 28 U.S.C. § 1914(a); CivLR 4.5(a). However, under 28 U.S.C. § 1915(a), the court may 6 authorize the commencement, prosecution or defense of any suit without payment of fees 7 if the plaintiff submits an affidavit, including a statement of all his or her assets, showing 8 that he or she is unable to pay filing fees or costs. “An affidavit in support of an IFP 9 application is sufficient where it alleges that the affiant cannot pay the court costs and still 10 afford the necessities of life.” *Escobedo v. Applebees*, 787 F. 3d 1226, 1234 (9th Cir.

2015). 11 “[A] plaintiff seeking IFP status must allege poverty with some particularity, definiteness 12 and certainty.” *Id.* (internal quotation marks omitted). The granting or denial of leave to 13 proceed IFP in civil cases is within the sound discretion of the district court. *Venerable v. 14 Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) (citations omitted).

15 Plaintiff’s renewed IFP motion contains a signed financial affidavit that satisfies the 16 Court that Plaintiff qualifies for IFP status. Accordingly, the Court grants Plaintiff leave to 17 proceed IFP. 18 II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B) 19 A. Legal Standard 20 When reviewing an IFP application, the Court must also review the underlying 21 complaint to determine whether it may proceed.

A complaint filed by any person seeking 22 to proceed IFP pursuant to 28 U.S.C. § 1915(a) is subject to sua sponte review and 23 dismissal should the Court determine, inter alia, that it is frivolous, malicious, or fails to 24 state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. 25 Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) 26 are not limited to prisoners.”).

27 “The standard for determining whether a plaintiff has failed to state a claim upon 28 which relief can be granted under 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as the Federal 1 Rule of Civil Procedure [(“Rule”)] 12(b)(6) standard for failure to state a claim.” *Watison 2 v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012).

Although detailed factual allegations are 3 not required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere 4 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 5 “Determining whether a complaint states a plausible claim for relief [is]... a context- 6 specific task that requires the reviewing court to draw on its judicial experience and 7 common sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the defendant- 8 unlawfully-harmed me accusation[s]” fall short of meeting this plausibility standard.

Id. 9 Under Rule 12(b)(6), a complaint must “contain sufficient factual matter, accepted as true, 10 to state a claim to relief that is plausible on its face.” *Id.* (citation omitted). 11 B. The Court’s Prior Order 12 The Court’s prior order of dismissal reviewed the allegations and claims in 13 Plaintiff’s

original complaint, and determined that “construing Plaintiff’s pleadings 14 liberally, he has not pleaded facts that plausibly assert a claim for violation of his 15 constitutional rights against the Orange County Superior Court or any other defendants.” 16 ECF No. 5 at 4.

The Court noted that although the complaint named defendants, alleged 17 some facts, and identified causes of action, it was conclusory in its allegations that his 18 rights had been violated. Id. at 3-4. The Court also determined that the complaint failed to 19 state a Monell claim against any municipal defendants. Id. at 4-5.

Finally, the Court raised 20 the question of venue in the Southern District of California, noting that the events of which 21 Plaintiff complained appeared to have taken place in the Central District of California. Id. 22 at 5-6. 23 The Court granted Plaintiff leave to amend his pleading to address the deficiencies 24 identified in the order, and further provided that an amended pleading “must also address 25 the basis for venue in the Southern District of California.” Id. at 6.

26 C. Plaintiff’s Amended Complaint 27 The Amended Complaint names additional defendants and invokes civil causes of 28 action for violation of due process under 42 U.S.C. § 1983, legal malpractice, medical 1 malpractice, defamation, violation of the False Claims Act, civil fraud, breach of fiduciary 2 duty, and violation of the Americans with Disabilities Act.

The Amended Complaint also 3 asserts violations of various federal criminal statutes—such as conspiracy to engage in 4 terrorism, criminal deprivation of civil rights, criminal breach of fiduciary duty or 5 embezzlement, false statements, and falsification of records—which do not give rise to a 6 civil cause of action. “Civil causes of action ... do not generally lie under the criminal 7 statutes contained in Title 18 of the United States Code.” *Del Elmer, Zachay v. Metzger*, 8 967 F. Supp. 398, 403 (S.D.

Cal. 1997). 9 As with Plaintiff’s original pleading, however, the Amended Complaint does not 10 appear to contain factual allegations establishing a civil cause of action against any named 11 defendant. Some defendants named in the caption are not the subject of any allegations in 12 the body of the Amended Complaint.

The Amended Complaint also contains allegations 13 of wrongdoing against various persons who are not named as defendants. 14 The Amended Complaint contains allegations against the Orange County Superior 15 Court, the Orange County District Attorney’s Office, Orange County jails, and the Irvine 16 and Westminster Police Departments in connection with what appears to be a prior arrest 17 or prior criminal case against Plaintiff that he claims was wrongfully pursued, resulting in 18 him being placed in an isolated and cold room during pretrial custody.

However, the Court 19 is unable to discern the underlying facts being alleged, let alone conclude that those facts 20 plausibly allege a claim pursuant to 42 U.S.C. § 1983 or any other civil cause of action. 21 The Amended Complaint also contains what appear to be unrelated allegations 22

against Grand Canyon University, which Plaintiff alleges changed Plaintiff's course grades 23 without an explanation.

Plaintiff alleges that Grand Canyon University discriminated 24 against him on the basis of his disability.¹ 25 Title II of the Americans with Disabilities Act states, "no qualified individual with 26 27 1 Plaintiff's original complaint had also named Grand Canyon University as a 28 1 a disability shall, by reason of such disability, be excluded from participation in or be 2 denied the benefits of the services, programs, or activities of a public entity, or be subjected 3 to discrimination by any such entity." 42 U.S.C. § 12132.

To make a prima facie case under 4 Title II, a plaintiff must show: "(1) he is a qualified individual with a disability; (2) he was 5 either excluded from participation in or denied the benefits of a public entity's services, 6 programs, or activities, or was otherwise discriminated against by the public entity; and (3) 7 such exclusion, denial of benefits, or discrimination was by reason of his disability." *Duvall 8 v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir.

2001) (internal quotation marks 9 omitted). Although the Amended Complaint properly alleges Plaintiff's disability, it fails 10 to allege non-conclusory facts stating a plausible claim for discrimination on the basis of 11 that disability. 12 Finally, the Amended Complaint does not plead facts establishing venue in this 13 district.

As the Court previously advised, the venue statute provides: "A civil action may 14 be brought in – (1) a judicial district in which any defendant resides, if all defendants are 15 residents of the State in which the district is located; [or] (2) a judicial district in which a 16 substantial part of the events or omissions giving rise to the claim occurred, or a substantial 17 part of property that is the subject of the action is situated[.]" 28 U.S.C. § 1391(b).

As far 18 as the Court can discern, the only allegations the Amended Complaint makes in relation to 19 venue is that he is a resident of San Diego, California. This is not sufficient to confer venue. 20 Plaintiff's allegations relating to proceedings or detention in Orange County appear to lay 21 venue in the Central District of California.

The Amended Complaint also recites that it 22 relates to "defendants located in California and Arizona," the latter apparently referring to 23 Grand Canyon University. Plaintiff has not established venue in the Southern District of 24 California. 25 Accordingly, the Court dismisses the Amended Complaint pursuant to 28 U.S.C. § 26 1915(e)(2)(B) for failure to state a claim, and, consistent with the advisal in the Court's 27 prior order, also dismisses the Amended Complaint for lack of venue in the Southern 28 District of California.

1 D. Leave to Amend 2 "A district court should not dismiss a pro se complaint without leave to amend unless 3 || 'it is absolutely clear that the deficiencies of the complaint could not be cured by

4 ||amendment.’” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting Schucker v. 5 || Rockwood, 846 F.2d 1202, 1204 (9th Cir.1988)).

The Court previously granted Plaintiff 6 ||leave to file an amended complaint curing the deficiencies identified by the Court, 7 ||including establishing a basis for venue, and advised that if Plaintiff failed to do so the 8 ||Court would dismiss the action. ECF No. 5 at 6.

The Amended Complaint does not cure 9 || the deficiencies and the Court concludes that further amendment would be futile. The Court 10 || therefore denies leave to amend. 11 CONCLUSION 12 For the foregoing reasons, Plaintiff's renewed motion to proceed IFP is GRANTED. 13 || However, upon determination that the Amended Complaint fails to state a claim and that 14 || Plaintiff has failed to establish venue in this District, the Court DISMISSES the Amended 15 || Complaint without leave to amend.

The dismissal is without prejudice. 16 In light of this disposition, any remaining motions, including Plaintiff's request for 17 temporary restraining order [ECF No. 3], are DENIED. 18 The Clerk of Court is directed to close the case. 19 IT IS SO ORDERED. Jekut ¢ Lowe 20 || Dated: July 30, 2025 1 Hon. Robert S. Huie United States District Judge 22 23 24 25 26 27 28